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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,715	02/25/2002	John Zimmerman	US020013	6622
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EXAMINER				
PENG, FRED H				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/084,715

**Applicant(s)**

ZIMMERMAN, JOHN

**Examiner**

FRED PENG

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 03/19/2009 have been fully considered but they are not persuasive.

Applicant first argues on pages 9-10 of Remarks that even when combined, the references do not teach the claimed subject matter as in Claim 1. The Finseth, Usui and Hassell references cannot be applied to reject claim 1 under 35 U.S.C §103 which provides that:

A patent may not be obtained..., if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains...

The Examiner respectfully disagrees. The combinations of Finseth, Usui and Hassell references explicitly or implicitly teach each element of claim 1 as seen in the following rejection section so that the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

Applicant further argues on pages 11-12 of Remarks that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. In the present case it is clear that the combination as suggested by the office action arises solely from hindsight based on the invention without any showing, suggestion, incentive or motivation in either reference for the combination as applied to claim 1. Therefore, for this reason, the examiner's burden of factually supporting a prima facie case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn.

The Examiner also disagrees with applicant's arguments. Finseth first discloses providing a recommendation program listing based on a user's viewing history (Para 72; Para 73 lines 8-11). Usui further disclose the EPG data of a program once is viewed by a user is deleted from the

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memory in such a way to allow the storage of the memory to be utilized more efficiently (Col 11 lines 44-51).

Therefore, the teaching from Usui provides a teaching, suggestion or motivation to modify the system of Finseth to include the deletion of previously viewed programs from the program recommendation listing such that the storage of the memory can be utilized more efficiently. The names of the previously viewed programs then is stored in a look-up list for later review .

Furthermore, a person of ordinary skill in the art would have recognized that applying the same technique of removing the previously viewed programs from the recommendation list would have yielded predictable results and would have improved memory utilization.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth et al (US 2005/0028207) in view of Usui et al (US 6,075,570) and Hassell et al (US 2007/0033615).

Regarding Claim 1, Finseth discloses an audio-video program recommendation system (FIG.3) for listing program material in accordance with a user's preferences (Para 9), said system comprising:

a microprocessor (FIG.3, -74) for recognizing and processing identifying signals for program items (Para 73 lines 8-9); an electronic storage device (FIG.3, -78) coupled to said microprocessor for storing look-up lists of program items (Para 71 lines 1-3) and signals associated therewith (Para 55 lines 9-12, Para 56 lines 14-15), said look-up lists comprising lists of previously viewed program items (Para 71 lines 1-3; Para 74 lines 1-6);

a recommendation algorithm incorporated into said microprocessor for choosing and listing recommended program items for current viewing on a display (FIG.6; Para 77 lines 1-5) based upon the nature (Para 72) and frequency (Para 73 lines 8-11) of previous program item selections that are recorded in said look-up lists in said electronic memory device (Para 71 lines 1-3).

Finseth fails to disclose a user-operable input signal device coupled to said microprocessor, enabling a user to selectively identify selected ones of said recommended program items on said display as having been previously viewed outside the purview of the system, such that said microprocessor then removes said selected ones of said recommended program items from said listed recommended program items for current viewing and adds said selected ones of said program items to said look-up lists in said memory device electronic memory device, wherein the recommendation algorithm excludes the choosing and listing of all previously viewed items from the look-up list in the listing of recommended items for current viewing on the display.

In an analogous art, Usui discloses a user-operable input signal device coupled to said microprocessor, enabling a user to selectively identify selected ones of program items in the program list as having been previously viewed outside the purview of the system to avoid future listings, such that said microprocessor then removes said selected ones of program items from said listed program items for current viewing and adds said selected ones of said program items to said look-up lists in said memory device, wherein the choosing and listing of all previously viewed items from the look-up list is excluded in the listing of recommended items for current viewing on the display (Col 11 lines 44-51; EPG data of viewed programs deleted from the RAM memory is unable to display for the future listings).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Finseth's system to include a user-operable input signal device coupled to said microprocessor, enabling a user to selectively identify selected ones of the program items as having been previously viewed to avoid future listings, such that said microprocessor then adds

said selected ones of said program items to said look-up lists in said memory device, as taught by Usui so that the user can search the stored data for programs that the user has watched before and utilize the memory more efficiently.

Finseth discloses a list of recommended programs for a viewer. Usui in view of Finseth further discloses a previously viewed program identified by the viewer and can be deleted from the recommended program list from the memory by the viewer to avoid future listings but not specifically disclose instructional material presented on the program list display and update the program list after user action.

In an analogous art, Hassell discloses instructional material presented on program list display for concurrently selectively identifying said selected program items for user action like deletion (FIG.9, FIG.13; Para 89) and then updates the program listing for viewing (Para 69).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth and Usui to include instructional material presented on said display for concurrently selectively identifying said selected program items for user action like deletion and updates the program listing for viewing after user action, as taught by Hassell as a reminder for a user to exercise available options.

Regarding Claim 5, Finseth discloses an audio-video program recommendation system for listing program material in accordance with a user's preferences, said system comprising:

- a computer apparatus (FIG.3, -34) capable of recognizing, processing and storing look-up lists of identifying signals for program items (Para 55; Para 59; Para 70);

- a recommendation algorithm incorporated into said computer apparatus for choosing and listing recommended program items (FIG.6, Para 77 lines 1-5) for current viewing based upon the nature (Para 72) and frequency (Para 73 lines 8-11) of previous program item selections that are recorded in said look-up lists (Para 71 lines 1-3). Finseth further discloses said computer apparatus comprises a keyboard having at least one key capable of identifying selected ones of said recommended program items (Para 64 lines 4-6).

Finseth fails to disclose identifying selected ones of said recommended program items as having been previously viewed by the user but not yet recognized by the system that said selected ones have already been viewed to avoid future listings, such that said computer apparatus then removes said selected ones of said recommended program items from said listed recommended program items for current viewing and adds said selected ones of said program items to said look-up lists.

In an analogous art, Usui discloses identifying selected ones of said recommended program items as having been previously viewed by the user but not yet recognized by the system that said selected ones have already been viewed to avoid future listings, such that said computer apparatus then removes said selected ones of said recommended program items from said listed recommended program items for current viewing and adds said selected ones of said program items to said look-up lists (Col 11 lines 44-51).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Finseth to include selectively identify selected ones of the program items as having been previously viewed to avoid future listings, such that said microprocessor then adds said selected ones of said program items to said look-up lists in said memory device, as taught by Usui so that the user can search the stored data for programs that the user has watched before and utilize the memory more efficiently.

Finseth and Usui both are silent about updating the program list after user action like deletion.

In an analogous art, Hassell discloses updating the program listing after user action like deletion (Para 69).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth and Usui to include updating the program listing for viewing after user action, as taught by Hassell to speed up program search for preferred programs.

Regarding Claim 8, Finseth further discloses checking for the receipt of a signal indicating the user's desire to view a program and presenting such identified program item for viewing (FIG.4, Para 64).

Regarding Claim 10, Finseth further discloses displaying together with said screen menu, an illustrative caption identifying said method of recommending program listings (FIG.6, -106, when FIND button is selected, a list of recommendation methods of program listings is displayed).

3. Claims 2, 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth et al (US 2005/0028207 A1), Usui et al (US 2004/0019906 A1) and Hassell et al (US 2007/0033615) as applied to Claims 1 and 5 above, and further in view of Percy et al (US 4,646,145).

Regarding Claims 2 and 6, Finseth and Usui disclose limitations in Claims 1 and 5, however, they fail to disclose user operable input device is a dedicated push-button associated with said instructional material.

In an analogous art, Percy discloses it is desirable to use a dedicated push-button 17 (FIG.2) in order to enable viewer selective actuation of input devices (Col 14 lines 6-10) and identify viewer reactions to a program in essentially real time (Col 13 line 5-29).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth and Usui to include dedicated push buttons as taught by Percy for the added advantage of increased convenience and simplicity for the user and enabling the user to more quickly/correctly input program rating selections.

Regarding Claim 3, Finseth discloses user operable input device comprises a plurality of dedicated push buttons, at least one of said push buttons serving to identify a selected one of said recommended program items for current viewing (Para 64, Para 66).



Finseth, Usui and Hassell fail to disclose dedicated push buttons associated with said instructional material.

In an analogous art, Percy discloses it is desirable to use a dedicated push-button 17 (FIG.2) in order to enable viewer selective actuation of input devices (Col 14 lines 6-10) and identify viewer reactions to a program in essentially real time (Col 13 line 5-29).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth, Usui and Hassell to include dedicated push buttons as taught by Percy for the added advantage of increased convenience and simplicity for the user and enabling the user to more quickly/correctly input program rating selections.

4. Claim 4 is rejected under 35 U.S.C 103(a) as being unpatentable over Finseth et al (US 200510028207), Usui et al (US 200410019906), Hassell et al (US 2007/0033615) and Percy et al (US 4,646,145) as applied to Claims 1 and 3 above, and further in view of Yamamoto (US 2007/0006266).

Regarding Claim 4, Percy further discloses it is desirable to use a dedicated push-button 17 (FIG.2) in order to enable viewer selective actuation of input devices (Col 14 lines 6-10) and identify viewer reactions to a program in essentially real time (Col 13 line 5-29). Usui further discloses recognizing and removing viewed programs for current and future listings (Col 11 lines 44-51; deletion from RAM memory suggests removing from current and future listings).

Finseth, Usui and Percy are silent about recommendation algorithm further serves to recognize program items that are identified as unacceptable; said microprocessor is programmed to create a look-up list of unacceptable programs for storage in said memory device. Percy further discloses it is desirable to use a dedicated push-button 17 (FIG.2) in order to enable viewer selective actuation of input devices (Col 14 lines 6-10) and identify viewer reactions to a program in essentially real time (Col 13 line 5-29).

In an analogous art, Yamamoto discloses recommendation algorithm further serves to recognize program items that are identified as unacceptable; said microprocessor is programmed

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to create a look-up list of unacceptable programs for storage in said memory device (Para 120, the contents of further less importance are identified as unacceptable and is programmed in the program list as past programs).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth, Usui, Hassell and Percy to include recommendation algorithm further serves to recognize program items that are identified as unacceptable; said microprocessor is programmed to create a look-up list of unacceptable programs for storage in said memory device, as taught by Yamamoto as an alternative reference for the service providers to avoid wrong recommendation programs based on this information.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth et al (US 2005/0028207) in view of Usui et al (US 6,075,570), Hassell et al (US 2007/0033615) and Yamamoto (US 2007/0006266).

Regarding Claim 7, Finseth discloses a method of recommending program listings in accordance with a user's selection preferences, said method comprising the steps of:

accessing a first electronic list representing programs available for viewing at a given time (FIG.4, -88A, a regular program guide for viewing at a given time, Para 64);

accessing a second electronic list representing a compilation of programs previously selected for viewing by an identified user of the system (Para 70, user viewing history record is the second electronic list);

comparing said first electronic list with said second electronic list, to obtain a list of recommended program items based upon the nature of the previously selected programs identified in said second electronic list (Para 77 lines 1-7);

displaying said list of recommended program items on a video display device for inspection by said user (FIG.6, -88B, Para 77 lines 3-5); selectively identifying and characterizing

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by a corresponding electronic signal, a program item on said list of recommended program items (FIG.6, user can use the remote Control to select the program, Para 77 lines 7-20).

Finseth fails to disclose selectively identifying and characterizing by a corresponding electronic signal, a program item on said list of recommended program items that was previously viewed outside the purview of the system by said user; appending to said second electronic list, program items included in said list of recommended program items that are currently selectively identified and characterized by said identified user; and removing said program items that are currently selectively identified and characterized by said identified user from said list of recommended program items.

In an analogous art, Usui discloses identifying and characterizing by a corresponding electronic signal, a program item on said list of recommended program items that was previously viewed outside the purview of the system by said user; appending to said second electronic list, program items included in said list of recommended program items that are currently selectively identified and characterized by said identified user; and removing said program items that are currently selectively identified and characterized by said identified user from said list of recommended program items (Col 11 lines 44-51).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Finseth to include selectively identify selected ones of the program items as having been previously viewed, such that said microprocessor then adds said selected ones of said program items to said look-up lists in said memory device, as taught by Usui so that the user can search the stored data for programs that the user has watched before.

Finseth discloses a list of recommended programs for a viewer. Usui in view of Finseth further discloses a previously viewed program identified by the viewer and can be deleted from the recommended program list by the viewer.

Finseth and Usui do not specifically disclose screen menu presented on the program list display and update the program list after user action like deletion.

In an analogous art, Hassell discloses screen menu presented on program list display for concurrently selectively identifying said selected program items for user action like deletion (FIG.9, FIG.13; Para 89) and then updates the program listing for viewing (Para 69).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the combined system of Finseth and Usui to include instructional material presented on said display for concurrently selectively identifying said selected program items for user action like deletion and updates the program listing for viewing after user action, as taught by Hassell as a reminder for a user to exercise an option.

As far as limitations regarding a user can identify a program as being unacceptable by said user has been described and analyzed as in Claim 4.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED PENG whose telephone number is (571)270-1147. The examiner can normally be reached on Monday-Friday 09:30-19:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hirl can be reached on (571) 272-3685. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fhp

/Joseph P. Hir/  
Supervisory Patent Examiner, Art Unit 2426  
June 3, 2009